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Supreme Court of the United States

OCTOBER TERM AND SESSION, 1952.

No. 490

IRENE B. WHETSTONE,

Petitioner,

vs.

ERNEST J. SAUBER, Director of Internal Revenue,

Respondent.

PETITION OF IRENE B. WHETSTONE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

IRENE B. WHETSTONE, Pro Se.

AFFIDAVIT

County of Cook,
State of Illinois—ss.

Irene B. Whetstone, being first duly sworn, deposes and says; that she is the petitioner named in the accompanying petition for grant of a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, entitled Irene B. Whetstone, Petitioner *v.* Ernest J. Sauber, Respondent; that she is aware that the Rules of the Supreme Court of the United States require that the answering brief of the respondent shall bear the name of a member of the bar of the United States Supreme Court; and affiant says that while this requirement does not appear to apply to her as petitioner, nevertheless she desires to present a petition and brief which will comply with the Court's unwritten conventions; and affiant says that with this in mind she made diligent effort to locate a member of the bar of the Supreme Court to assist her in the preparation of her brief to accompany said petition; and affiant says that she has interviewed numerous attorneys but has been unsuccessful in her efforts, and it is her firm belief that there has been an attempt by those representing the respondent to prevent her from obtaining the services of a capable attorney; and affiant says that as the defendant in an action in which her liberty is in jeopardy, it is her conviction that there should be no curtailment of her right to obtain review of proceedings which she is prepared to show were so injudicious as to demand the exercise of the supervisory power of the high court; and affiant says that this affidavit is her only means of placing before the United States Supreme Court the circumstances which prevented her from obtaining the services of an attorney, and made it necessary for her to prepare and present the accompanying petition and brief on her own behalf, as the person affected by the decision to be reviewed, and further affiant sayeth not.

IRENE B. WHETSTONE.

Subscribed and sworn to before me
this sixth day of December, 1952.
(Seal) Pauline A. Zalazinska Notary Public

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ARGUMENT I Rule 12 (b) (2) of the Rules of Criminal Procedure reads in part: "Lack of jurisdiction, or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding" (See also Rule 12(h) of the Rules of Civil Procedure). This rule which is a statement of law (See Act June 25, 1948, c. 645, 62 Stat. 683, Title 18 U.S.C. Section 3771) makes it incumbent upon this Court *to take notice* of the showing presented herein, *since the action is still pending, and the showing is before this Court on petition.* Discretionary power must give place to statutory rights. The showing made in the District court, renewed in the court of appeals and now before this court, is as fol-

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lows: Section 3654(a) Internal Revenue Code, is not mandatory to the party summoned; it establishes no punitive measures; petition for body-attachment, alleging its violation, by your petitioner, did not charge an offense cognizable in the law. Section 3615(e) Internal Revenue Code does not confer jurisdiction upon a Federal court to punish by contempt process, it forbids it; therefore the District court did not have jurisdiction, invoked under that Section, to entertain the petition praying the court to arrest your petitioner and require her to "show cause why she should not be held for contempt". The court lacked jurisdiction to grant the relief prayed for. Your petitioner, therefore, was in the District court as the result of an illegal arrest and the order entered against her was not a "lawful" order; disobedience of it was not an offense according to Title 18 U.S.C. Section 401. The order of commitment, therefore, was illegal 43

ARGUMENT II—Affirmation of the order of commitment, by the Court of Appeals, subjects your petitioner to an invasion of her rights and immunities under the law, and under the Fourth and Fifth Amendments to the Constitution, by compelling her, a party under arrest, to testify and produce evidence against herself, as a condition precedent to obtaining her liberty. The court should discharge the contemnor when important constitutional objections are renewed. *Hoffmann* v. *United States,* 341 U.S. 480, 489; *Gouled* v. *United States,* 255 U.S. 298, 313 45

ARGUMENT III—The Court of Appeals by withholding adjudication of the issues raised by appellant (your petitioner) in its decree of October 16, 1952, impaired the contractual undertakings of the $1500 bail bond to which it had held her bound, by depriving her of an opportunity to reverse the "judgment and

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sentence'' of the District court, as required of her by said bond. It also impairs her rights when it contemplates returning the action on mandate to a District court totally devoid of jurisdiction. This Court has properly held that a decision rendered on the merits which should have been decided on jurisdiction must be set aside (*Whittemore* v. *Amoskeag Nat'l. Bank,* 134 U.S. 527, 530; *Piedmont & N.R.Co.,* v. *United States,* 280 U.S. 469, 476). The instant decision, so obviously in conflict with applicable rulings of this Court, should be reversed 46

ARGUMENT IV—The United States Court of Appeals for the Seventh Circuit in its decree of October 16, 1952, made only one decisive statement, unsupported by legal authority, while it withheld recognition of more than seventy Supreme Court decisions with which its decree is in conflict (See accompanying brief on appeal to the United States Court of Appeals for the Seventh Circuit). Its decree was also in conflict with its own rulings in earlier decisions. Abandonment by the Court of Appeals of the accepted judicial practice of recognizing controlling authorities, either to accept or to distinguish from them, is not only a matter of concern to this Court, but, is one of vital public interest 47

ARGUMENT V—Where the Federal courts fail to observe the rights of a citizen under local State laws this Court should intervene to prevent the general deterioration of respect for local laws 48

ARGUMENT VI—In withholding adjudication of the substantial issues raised by appellant on appeal, the Court of Appeals, in effect, abandoned its function as a reviewing court, see *Post* v. *Jones,* 19 How. 150,

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160. Its divers departures from the accepted and usual course of judicial proceedings are set out in particular in the accompanying petition, under the heading "Reasons Relied on for the Grant of a Writ of Certiorari". In this action, involving her liberty, defendant has had no actual review of the District court proceedings. This Court should exercise its power of supervision in order to preserve the right of review 49

ARGUMENT VII—A costly record of the proceedings in the District court was preserved and it was submitted on appeal to the United States Court of Appeals. The summary and statement of the matter involved, (See accompanying petition) with its references to the record, provides evidence of drastic departures by the District court from the accepted and usual course of judicial proceedings; for example, where it arrested your petitioner without "probable cause"; entertained an action where it lacked jurisdiction; denied the defendant the right to defend; and ordered her, a party under arrest, to testify and produce evidence against herself; where its departures from accepted judicial proceedings were the rule, not the exception and constituted a travesty upon justice. The Court of Appeals in rendering its decree sanctioned this injudicious conduct by the District court. With a record of these facts before it no reviewing court should fold its hands and look the other way. Need for the exercise of supervisory power is obvious....50

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PETITION OF IRENE B. WHETSTONE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, sometimes referred to herein as appellant or defendant in relating lower court proceedings,

respectfully prays for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review the decision of that court entered on the 16th day of October, 1952, (petition for rehearing denied November 8, 1952). A transcript of the Record in the case, including the proceedings in said Court of Appeals, is furnished herewith in accordance with the rules of this Court. Petitioner also furnishes herewith a copy of her brief on appeal to the United States Court of Appeals for the Seventh Circuit to apprize this Court as to the adequacy of the presentation of the issues which she urged before the Court of Appeals.

Summary and Statement of the Matter Involved.

The action here, for review by this Court, was brought to the United States Court of Appeals for the Seventh Circuit from an order of commitment (R. 58) entered January 30, 1952, in the United States District Court for the Northern District of Illinois, Eastern Division. The said order of commitment held the defendant (petitioner herein) in contempt of a prior order of the District court (R. 37) entered January 15, 1952, and without adjudging her guilty of any offense, sentenced her to the custody of the Attorney General. The court directed the United States Marshal to take the defendant into custody (R. 57) and, as a result, your petitioner spent two nights and two days in Cook County jail *where her identification, including finger prints, was incorporated with Criminal records.* She was released on $1500 bail (R. 97) after Notice of Appeal (R. 61-68) was filed February 1, 1952.

The order of January 15, 1952, (R. 37) alleged to have been contemned, was entered in an action *Jarecki* v. *Whetstone**, 48-C-1 (N.D. Ill.). *Since authority of the court to punish for disobedience of its orders, under authority of Title* 18 *U.S.C. Section* 401 (See Appendix), *is limited to its "lawful order"*, the said action, *Jarecki* v. *Whetstone,* became the primary issue on appeal in support of your petitioner's position that the order alleged to have been contemned was not a lawful order. The following includes a summary of the action *Jarecki* v. *Whetstone,* 48 C 1 (N.D. Ill.). See Record pages 1-5 and 16-19 for a chronological statement of that case.

Defendant in the action *Jarecki* v. *Whetstone was arrested and brought into court by the United States Marshal* January 6, 1948, on a warrant of arrest (R. 11) charging violation of Federal statutes, Sections 3654 and 3615 Internal Revenue Code (see Appendix). The writ of attachment (R. 11) was ordered (R. 10) by a judge of the United States District Court for the Northern District of Illinois, Eastern Division, Walter J. LaBuy, the trial judge. At the time of her arrest, the defendant was not involved in any litigation; no court summons had been served upon her, and there was no court action dependant upon any demands made of her. *The petition for body attachment* (R. 6), filed January 5, 1948, by John T. Jarecki, Collector of Internal Revenue for the First District of Illinois, and accompanying affidavit (R. 8-9), *set forth only one supported charge,* namely, that a collector's summons, Form 132 (R. 7-8) was

*On motion of the United States District Attorney, the United States Court of Appeals ordered that Ernest J. Sauber be substituted for the original plaintiff-appellee John T. Jarecki R. 112).

served upon defendant and that she failed to appear in response. Form 132, also accompanying the petition, states (R. 7):

> "By virtue of the authority vested in me by Section 3654(a) of the Internal Revenue Code of the United States you are hereby summoned" etc.

No other statutory authority was invoked by the collector in issuing the summons. Section 3654(a) Internal Revenue Code (see Appendix), (printed on the reverse side of the collector's summons) (R. 8), specifies that the method of enforcement shall be in accordance with Section 3615(e) Internal Revenue Code (see Appendix), *thus limiting "enforcement" measures to that section.* The prayer of the plaintiff's petition for body attachment (R. 6-7) *asked the District court to require the defendant "to show cause why she should not be held for contempt". No other defense was called for or permitted.*

No hearing was had when defendant was arrested and brought before the court January 6, 1948, (R. 2) but the cause was continued and she was required to file a $500 recognizance bond (R. 2). (After the first appearance, there were twelve continuances in all in the District court, only one of which was on the defendant's motion (R. 5).) *Over defendant's objections, the final hearing date on the defendant's Answer* (R. 3) set for April 25, 1949, *was stricken and abandoned by the court* (R. 4) and a later date was set to provide a hearing (R. 5) on plaintiff's motion *for a "summary judgment" in this body attachment action.* Invoking Rule 56 of the Rules of Civil Procedure, plaintiff moved (R. 3) *for a "summary judgment" requiring defendant, the party under arrest, to appear before the plaintiff,* John T. Jarecki, *and give testimony and produce*

her books of account and all records which would disclose her financial condition. During the hearing on motion for summary judgment, May 3, 1949, *the trial judge acknowledged that he could not compel the defendant to testify* in the action *Jarecki* v. *Whetstone* (R. 30-31). *However, he granted plaintiff's motion and entered an order* (R. 19-20) *requiring the defendant, a party under arrest, to testify and produce evidence against herself.* When defendant filed Notice of Appeal (R. 3) from the order of May 3, 1949, and moved for a stay, plaintiff's counsel immediately offered to move the court to vacate the said order if defendant would withdraw her appeal (R. 3). The District court's order (R. 19-20) was vacated accordingly on May 6, 1949 (R. 79).

The case remained dormant until February 9, 1951, (R. 80) when plaintiff, Jarecki, filed a motion for reinstatement. On February 12, 1951, the trial judge, Walter J. LaBuy reinstated the order vacated May 6, 1949, (R. 12). On February 16, 1951, *defendant established equity defenses* (R. 25) *to the action Jarecki* v. *Whetstone by filing a petition (directed to a statutory three-judge District court, to be convened under authority of Title* 28 *U.S.C. Section* 2284) to enjoin Prosecution of any action brought against her under Sections 3654(a) and 3615(e) Internal Revenue Code, because the procedures which they contemplate have been held to be repugnant to the Constitution, and to restrain execution of the order (R. 12) of February 12, 1951. This suit, entitled *Whetstone* v. *Jarecki,* 51 C 269 (N.D. Ill.) charged the said Jarecki with malicious prosecution of the action *Jarecki* v. *Whetstone,* and sought monetary relief for loss sustained. *This suit in equity was unlawfully diverted*

*from the jurisdiction of the court to which it was directed and was withheld from the active calendar of the District court.** (The defendant, Jarecki, defaulted in the equity suit, for failure to Answer. Default notice was filed with the clerk of the District court.)

Being deprived of her established defense in equity, the defendant was obliged to again file a Notice of Appeal (R. 3). At a hearing before *the trial judge, Walter J. LaBuy,* February 21, 1951, at which he denied defendant's motion for stay, *he acknowledged that he did not know the legal requirements to which his order of February* 12, 1951, *would subject defendant* (R. 21-22). She obtained a stay order from the United States Court of Appeals for the Seventh Circuit.

On March 16, 1951, petitioner filed a motion with the United States Court of Appeals, for a preliminary hearing pertaining to the jurisdiction of the lower court. Her motion was denied. Defendant was obliged to proceed with the costly appeal although the Court of Appeals dismissed the same November 6, 1951, for lack of jurisdiction, holding that the order appealed from was not a final order (192 F. 2d 121). It withheld adjudication, however, of all questions raised by appellant (your petitioner) as to the jurisdiction of the lower court.

Left without defense to the grievous order of February 12, 1951, by the decision of the Court of Appeals, the defendant again sought release of her suit in equity in the District court. It was released to the trial judge, Walter J. LaBuy, whose order it sought to enjoin. When Judge

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* On March 5, 1951, petitioner filed a motion for leave to file, and a Petition for Writ of Mandamus to compel compliance with Title 28, Section 2284. See **Whetstone v. O'Donovan, Igoe, et al., 340 U.S. 950.** Motion for leave to file was denied.

LaBuy refused to convene a three-judge court and indicated he would entertain plaintiff's motion to dismiss that suit in equity, your petitioner filed a supplemental suit to enjoin such action, in an attempt to maintain a defense to the action *Jarecki* v. *Whetstone*. *The supplemental suit in equity, together with the original equity suit, was assigned to J. Sam Perry, judge of the United States District court for the Northern District of Illinois. Subsequently, he unlawfully* * *"dismissed" all of your petitioner's suits in equity,* including one in which he was named respondent (see Appendix), without permitting your petitioner to present any argument or to object in open court. On plaintiff's motion filed January 8, 1952, the action *Jarecki* v. *Whetstone* was called (R. 31-32) immediately following "dismissal" of the equity suits, and the order of February 12, 1951, (R. 12), which the suits in equity sought to enjoin, was "reinstated" January 8, 1952, by Judge Perry, the substitute judge. (He was obliged to vacate this order later when it was found that the latter action was not on his calendar.)

That same day, January 8, 1952, the *defendant appeared before* Judge Walter J. LaBuy, *the trial judge* (R. 33-35) *on motion* (R. 32) *to vacate his order of February* 12, 1952, (R. 12), in the action *Jarecki* v. *Whetstone*. Judge LaBuy agreed that the action was still on his calendar, but *he refused to have anything further to do with the case* (R. 34-35), and returned it to the Executive Committee of the District court. *That committee transferred it to Judge Perry* (R. 36), *the substitute judge.* Upon plaintiff's renewed motion (R. 36) on January 15, 1952, *Judge Perry again "reinstated"* (R. 37-39) *the trial judge's order of February* 12, 1951, *without permitting the defendant to*

* See Title 28 U.S.C. Section 2284 (5) Appendix.

object or defend in open court (R. 39-40). While the original order of February 12, 1951, required only that defendant give testimony, *the reinstated order incorporated a vital change, adding the words "under oath"* (R. 38).

On January 22, 1952, plaintiff moved the court (R. 40-42) for an order adjudging defendant in contempt for failure to comply with its order of January 15, 1952. Defendant, who was given until 12 o'clock noon, January 24, 1952, to answer, filed her Answer on time (R. 42-48.) At the hearing, held January 30, 1952, Jarecki, who had defaulted in the equity suit, charging him with malicious prosecution of the action, *Jarecki* v. *Whetstone,* testified in his own behalf (R. 49-50).

The findings, conclusions and order of commitment which were prepared in advance of the hearing by opposing counsel were handed to the court (R. 52) before the defendant had been given opportunity to plead (R. 54). At the conclusion of the hearing, the court ordered defendant taken into custody without having read the order prepared by opposing counsel (R. 57). *There was no statement from the bench as to why defendant was being committed, of what offense she was guilty, or what her sentence would be. There was no judgment of guilt.* The judge made no mention of the plaintiff's motion. (Defendant was handed a copy of the commitment order by opposing counsel when she was taken into custody (R. 57).)

The order of commitment (R. 58-60), as prepared in advance of the hearing by opposing counsel, was captioned a "civil action" but *there was no showing of the statutory authority invoked. It was not a "judgment order". The docket entry* (R. 83) *does not indicate that a "judgment" was entered against the defendant.* Defendant's appeal

of necessity bore the same caption as the order of commitment. The bond form (R. 97) furnished by the District court (signed by the defendant while still in custody and under duress) required defendant, on penalty of forfeiting the bond, to take an appeal to the United States Court of Appeals and there to obtain a reversal of the "judgment and sentence" rendered against her, *in an action "between the United States of America, plaintiff, and Irene B. Whetstone, defendant". There is no record of any such judgment or sentence in the said District court.*

The order of commitment (R. 58-60) *required the defendant to testify under oath and produce evidence against herself as a condition precedent to obtaining her liberty.*

Defendant appeared on motion February 11, 1952, before the substitute judge of the said District court, and moved for correction of the illegal sentence and revision of the bond, or release thereunder. Judge Perry denied her motion, threatened recommitment and ordered her to stay out of his court. (R. 70-73).

Defendant's motion to the Court of Appeals for a ruling as to whether the action on appeal was civil or criminal (R. 89) was denied (R. 92).

Defendant made application to the United States Court of Appeals for release from the inapplicable bail bond (R. 92-96). Application was denied (R. 112).

The United States District Attorney's motion to the United States Court of Appeals for an order authorizing substitution of Ernest J. Sauber, as plaintiff-appellee, in place of John T. Jarecki (R. 102) was granted (R. 112) and defendant's objections (R. 105-111) were overruled.

A decision (R. 115-120) was rendered by the United States Court of Appeals on October 16, 1952. The decision withheld adjudication of the substantial issues raised by appellant on appeal (R. 62-67). Petition for rehearing was denied November 8, 1952 (R. 122).

The order for stay of mandate was entered November 12, 1952, (R. 122).

JURISDICTIONAL STATEMENT.

The grounds for jurisdiction are:

(1) The cause to be reviewed is now stayed and pending in the United States Court of Appeals for the Seventh Circuit.

(2) The date of the decree to be reviewed is October 16, 1952; petition for rehearing denied November 8, 1952.

(3) The order staying mandate was entered November 12, 1952.

(4) Authority for issuing writ of certiorari is provided by Title 28 U.S.C. Section 1254(1). See also Act of February 13, 1925, Section 8(d) and Rule XI of the Rules of Practice and Procedure—292 U.S. 661, 666.

(5) Cases believed to sustain the issuance of a writ in the present instance are:

Hoffman v. *United States*, 341 U.S. 480.

United States ex rel. Touhy v. *Ragen and G. R. McSwain*, 340 U.S. 452.

Bowman Dairy, et al. v. *United States and W. L. Hotchkiss*, 340 U.S. 214.

Hickman v. *Taylor*, 329 U.S. 495.

(6) The record does not affirmatively show any statutory authority for the contempt action. The United States Court of Appeals refused to rule as to whether the instant

cause, a contempt proceeding, is civil or criminal (R. 92) (R. 119).

(7) The cause here for review presents Federal questions. The statutes directly involved are Section 3654(a) and Section 3615(e) Internal Revenue Code (see Appendix). The validity of these sections as authority for the action brought against your petitioner is in issue.

(8) Lack of jurisdiction of the District court was one of the substantial issues raised by your petitioner in the District court and renewed on appeal.

(9) The following cases support the jurisdiction of the reviewing court to entertain an action for the purpose of determining the jurisdiction of the trial court.

United States v. *Corrick,* 298 U.S. 435, 440.
United States v. *Huckabee,* 16 Wall. 414, 435.
Stickney v. *Wilt,* 23 Wall., 150, 163.

Note—explanatory of paragraph 8 above:

The following issues pertaining to the jurisdiction of the District court were raised by appellant on appeal (R. 62-64) but adjudication thereof was withheld by the Court of Appeals:

(a) The District court lacked jurisdiction to enter the order of commitment because defendant was in court solely as the result of an illegal arrest (R. 11) in the contributory action *Jarecki* v. *Whetstone,* 48 C-1 (N.D. Ill.). Section 3654(a) Internal Revenue Code (see Appendix) which defendant was charged with violating is not mandatory, neither does it establish punitive measures for disobedience of its recitations. *There was no probable cause for issuance of the warrant for the defendant's arrest.*

(b) The District court lacked jurisdiction to enter the order of commitment (R. 58) under the limited authority

of Title 18 U.S.C. Section 401 (see Appendix), because the order alleged to have been contemned was not a "lawful" order.

(c) The District court lacked jurisdiction to institute or entertain the contributory action *Jarecki* v. *Whetstone*, 48 C-1 (N.D. Ill.) in which the order alleged to have been contemned was entered. The plaintiff's petition for body attachment (R. 6) in that action, which invoked Section 3615 (e) Internal Revenue Code (see Appendix), prayed the court to require the defendant to "show cause why she should not be held for contempt" for alleged violation of Section 3654(a) Internal Revenue Code. The court was prohibited by Section 3615(e) from punishing, by contempt process, violation of the said Section 3654(a). See Title 28 U.S.C. Section 385, supplanted by Title 18 U.S.C. Section 401 (see Appendix). *Therefore the court lacked jurisdiction to grant the relief prayed for by plaintiff's petition.*

(d) The conditions specified by Rule 63 of the Rules of Civil Procedure (see Appendix) were not present to warrant transfer (R. 36) of the action *Jarecki* v. *Whetstone* to a substitute judge to enforce the discredited order of the trial judge (R. 12).

(e) Had the substitute judge had jurisdiction, he would have forfeited it when, in violation of Title 28 U.S.C. Section 2284(5) and Title 28 U.S.C. Section 455 (see Appendix), he unlawfully dismissed defendant's suits in equity, established as defense to the action *Jarecki* v. *Whetstone*, and, immediately thereafter, entered the order (R. 37) against her in the action *Jarecki* v. *Whetstone* without

permitting her to object or defend in open court (R. 31-32 and R. 39-40).

The following cases sustain petitioner's position that it is the duty of the reviewing court to decide any question of jurisdiction raised on appeal—*Jarecki* v. *Whetstone,* 192 F. 2d 121 (7th Cir.); *McNutt* v. *General Motors Acceptance Corporation,* 298 U.S. 178, 184; and that the decision rendered by the Court of Appeals October 16, 1952, on the merits, when it should have been decided on jurisdiction, should be set aside—*Whittemore* v. *Amoskeag Nat'l. Bank,* 134 U.S. 527, 530; *Piedmont & N. R. Co.* v. *United States,* 280 U.S. 469, 476.

QUESTIONS PRESENTED.

(1) Federal courts being courts of special jurisdiction, what specific statutory authority was invoked by the District court for the entry of the commitment order from which the appeal was taken?

(2) If entry of a commitment order is authorized for an offense which is listed only in the Federal Criminal Code under the heading "Crimes and Offenses", are the proceedings in which a defendant is committed for that offense proceedings in a criminal action?

(3) Under what statutory authority was the substitution made in the instant action (a contempt proceedings) of a new complainant for the actual complainant, the Federal Government, whose authority was purportedly contemned?

(4) Is it not incumbent upon the reviewing court, in a criminal action, to consider every question raised pertaining to the jurisdiction of the lower court, such as the legality of the process by which defendant was brought into court,

i.e., whether the petition for the issuance of a warrant of arrest charged an offense cognizable as such under the law, and whether the lower court had jurisdiction to entertain the action?

(5) Where, by reason of equity suits still pending in the District court, generally effective restraints have been established which seek to enjoin the prosecution of the action *Jarecki* v. *Whetstone,* is it not necessary to observe those restraints as they relate to that contributory action? Can the reviewing court properly permit further prosecution of the action *Jarecki* v. *Whetstone* by the substitution of a new plaintiff, alleged to be a "successor" to the one now under said restraints?

(6) Having in mind the fact that the authority of the Federal District court to punish, by contempt process, disobedience of its orders, is limited to its "lawful" orders, is it not incumbent upon the reviewing court to fully determine and declare the law concerning the lawfulness of the order alleged to have been contemned?

(7) With respect to the legality of defendant's arrest in the action *Jarecki* v. *Whetstone,* is it not necessary to confine consideration here to the one and only *supported charge* set forth in the petition instituting her arrest and given as the "probable cause" in the warrant for her arrest; namely, alleged violation of Section 3654(a) Internal Revenue Code?

(8) Where defendant was alleged to have violated only one Federal statute, according to the one and only supported charge set forth in the petition for her arrest, namely, violation of Section 3654(a) Internal Revenue Code, and that statute was not mandatory to any one, nor

its disobedience subject to penalty, was there a "probable cause" justifying a warrant for arrest? Was such a charge cognizable as a Federal offense under the law?

(9) Is it not an invasion of a constitutional immunity to arrest a defendant where no "probable cause" exists for such arrest?

(10) Where precise limitations are set forth in a statute, as in Section 3654(a) Internal Revenue Code, prescribing the specific methods of enforcement as provided by Section 3615(e) Internal Revenue Code, may the court deviate from the limitations contained in the latter section?

(11) Does a Federal judge have jurisdiction to order the arrest of a citizen on a petition praying that defendant be attached and brought before the court "to show cause why she should not be held for contempt" (the only defense called for or permitted) for alleged violation of a Federal statute, where the law expressly forbids punishment for the said offense by contempt process, and the statute itself establishes no punitive measures?

(12) May a Federal judge order the arrest of a citizen, who has committed no statutory offense cognizable as such under the law, so as to provide the court with opportunity to create the occasion for an offense for which it may punish one so apprehended?

(13) Where the defendant is under arrest charged with an offense not cognizable as such under the law, and for which the Federal court has no authority to punish her, may the court detain the defendant under bond and rewrite

the innocuous statute which she was alleged to have violated, as a court order, thereby creating the occasion for an offense for which the court may punish the defendant?

(14) Where defendant is under arrest, charged with violating a Federal statute, may the court deny a hearing on her Answer to that charge, and without adjudging her guilty of such charge, enter a "summary judgment" requiring her to testify and produce evidence against herself?

(15) May it be considered that a judge passed upon the lawfulness of his order when he admits in open court that he does not know to what statutory requirements his order will subject the defendant, or to what extent her rights and immunities will be invaded thereby?

(16) Where a judge has admitted during court proceedings that he could not compel defendant to be sworn and give testimony in the action before him, what is the status of an order, entered in said action, requiring the defendant to give testimony and produce evidence against herself?

(17) Where the trial judge is available—is neither sick nor disabled, but refuses to have anything further to do with the case, what is the status of an order which is a reinstatement by a substitute judge of an order which the said trial judge originally entered but refused to enforce?

(18) What is the status of an order entered in an action where records before the court clearly indicate collusion to unlawfully deprive a defendant of established defenses to said action?

(19) What is the status of an order, entered in an action, after the judge has unlawfully dismissed properly

filed suits in equity seeking to enjoin prosecution of the said action?

(20) What is the status of a reinstated order, entered by a substitute judge after the trial judge has refused to enforce it, when the order as reinstated incorporates changes prejudicial to the defendant, and it is entered without permitting defendant to object or defend in open court?

(21) What is the status of an order of commitment entered in a contempt proceedings where the findings, conclusions of law, sentence and order of commitment, instead of being prepared by the judge, as a result of the hearing, were prepared in advance of the hearing by opposing counsel, were handed to the judge during the hearing before defendant had opportunity to plead and were passed along by the judge, for execution by the marshal, without the judge having read it?

(22) What is the legal status of a sentence which commits the defendant to jail for an indefinite period but provides no documented record of the defendant having been adjudged guilty of an offense?

(23) In this proceeding for contempt, an offense listed in the Criminal Code under "Crimes and Offenses", what is the status of the commitment order which requires defendant—the one committed, to testify against herself as a condition precedent to obtaining her liberty?

(24) Having in mind such controlling authorities as *United States* v. *White*, 322 U.S. 694, 699, may this reviewing court affirm, or in any manner condone, the action of the Federal District court in committing defendant, a citizen of the United States, to jail, for failing to comply with an order requiring her to make disclosures in the form of oral testimony, documents and chattels, against herself, as

a witness; disclosures sought for the purpose of locating property which defendant would then be required to forfeit?

(25) In view of the rights and immunities afforded every citizen under the Fourth and Fifth Amendments to the Constitution, and under the law, may the statute, Section 3654(a) Internal Revenue Code, be considered valid, when it purports to authorize the summoning of an individual to testify under oath and produce documentary evidence against herself, in an investigation which the said Section dedicates in advance to the "detection and punishment of any frauds"?

(26) Where a substantial question is raised concerning the jurisdiction of a Federal District court, may a reviewing court withhold adjudication of that issue and decide the case on another ground, which will return the case to the lower court for further action with the jurisdictional issue undetermined?

(27) May a Federal court deprive a defendant of her rights and immunities under local State laws?

(28) Where the prevailing law governing contempts, namely, Title 18 U.S.C. Section 401, is limited to "punishment" by fine or imprisonment for the contempt charged, *that is for an act done or left undone* which constituted the contempt defined by law, by what authority does the court order the defendant subjected to coercive measures *to compel the doing of some act?*

(29) What is the status in equity of the undertakings of a bail bond to reverse the "judgment and sentence" of the District court, to which undertakings the Court of Appeals has held the defendant bound, where the Court of Appeals has prevented fulfillment of such undertakings by

withholding adjudication of the issues raised by defendant-appellant on appeal?

(30) May the substitution of a plaintiff-appellee be ordered in an action (a) where it was instituted by a warrant for arrest on a charge of violating a Federal statute, and the only defense called for or permitted the defendant was "to show cause why she should not be held for contempt for said violation? (b) Where no monetary claim was made by the original plaintiff, or monetary judgment entered in his favor which could be transferred to a substitute? (c) Where the substitute plaintiff does not occupy the same position in relation to the defendant as that assumed by the original plaintiff who instituted the action, and could not, therefore, be held responsible for his acts as in the case of the original plaintiff?

Reasons Relied Upon For the Grant of a Writ of Certiorari.

The following pages set out in two sections the reasons upon which petitioner relies in seeking the grant of a writ of certiorari:

Section I—In general as such reasons relate to the rights and immunities of your petitioner;

Section II—In particular, as such reasons relate to the action of the Court of Appeals in rendering a decision which is—

(a) in conflict with applicable decisions of the United States Supreme Court;

(b) in conflict with its own earlier decisions;

(c) in conflict with applicable local law, and

(d) a decision which has radically departed from the accepted and usual course of judicial proceedings, and has sanctioned such departure by the District court.

SECTION I.

Affirmation by the Court of Appeals, of the District court's order of commitment, while withholding consideration and adjudication of the substantial issues raised by the appellant on appeal, seriously impairs petitioner's rights as follows:

(1) It deprives the defendant of her liberty without due process of law:

Rule 12(b) (2) of the Rules of Criminal Procedure states:

> "Lack of jurisdiction or the failure of the indictment or information to charge an offense *shall be noticed by the court* at any time during the pendency of the proceedings." (Italics added)

(See also Rule 12(h) of the Rules of Civil Procedure).

The foregoing rule of procedure *constitutes a definite process of law,* guaranteeing certain legal rights to which the defendant is entitled, and the affirmation of the order of commitment by the Court of Appeals, while withholding adjudication of issues raised by her challenging the jurisdiction of the District court and pointing out the failure of the warrant for her arrest to charge an offense cognizable as such in the law, *denied defendant due process of law in an action in which her liberty is in jeopardy.*

Note: This showing made by your petitioner is now before this Court on petition, and the cause is still pending. *It should be noticed by this Court. Discretionary power should give place to a legal right.*

(2) The affirmation of the order of commitment by the Court of Appeals, subjects the defendant to an invasion of her rights and immunities under the law and under the Fourth and Fifth Amendments to the Constitution, by compelling her, a party under arrest, to testify and produce evidence against herself, as a condition precedent to obtaining her liberty:

An invasion of the defendant's rights and immunities under the Fourth and Fifth Amendments to the Constitution, is a matter to which no court should turn an inattentive ear. See *Hoffman* v. *United States*, 341 U.S. 480, 489, in which the Supreme Court said:

> "Clearly this petition * * * was directed to the power of the committing court to discharge the contemnor for good cause—a power which courts should be solicitous to invoke when important constitutional objections are renewed."

Also with respect to the defendant's rights and immunities, Title 18 U.S.C. Section 3481, entitled "Competency of Accused" states:

> "In trial of all persons charged with the commission of offenses against the United States * * * the person charged shall, *at his own request, be a competent witness.* His failure to make such request shall not create any presumption against him." (Italics added).

The defendant's presence in the District court was solely by reason of her arrest on a charge of violating a Federal statute (Section 3654(a) Internal Revenue Code*). In said action, and in the contempt action, invoked under

* Note: Section 3654(a) Internal Revenue Code, which defendant was charged with violating, is in contemplation of and preliminary to a criminal action. See Appendix for statutes involved.

Section 401 of the Criminal Code, defendant would be a *competent witness only* at her own request. She could not be compelled to be sworn and to testify. The orders entered in said actions requiring her to be sworn and to testify, and to produce evidence against herself are in violation of the statutes as well as an invasion of her constitutional immunities.

The Court of Appeals excluded from its decision any reference to defendant's claim of immunity in this respect and in so doing it again denied her due process of law. By this petition defendant renews her claim of immunity and asks the court to sustain her claim under the Fourth and Fifth Amendment to the Constitution and under the law. (It will be noted that defendant appeared in the District court before the substitute judge, J. Sam Perry, on motion, February 11, 1952, and moved for correction of the illegal sentence, but her motion was denied and the judge threatened her with recommitment and told her to remain out of his court. She therefore could not look to that court for relief.)

(3) The Court of Appeals impaired defendant's rights by depriving her of an opportunity to reverse the judgment and sentence of the District court, as required by the $1500 bail bond, to the undertakings of which the Court of Appeals, in effect, became a party, when it affirmed those undertakings by denying defendant's motion for release thereunder:

The bail bond in amount of $1500 demanded of the defendant by the District court, before it would release her from custody, was entirely erroneous and inapplicable. On June 12, 1952, appellant moved the Court of Appeals to relieve her from the undertakings of the said bond, which

(a) requires her to prosecute an appeal from a "judgment" (in favor of the United States) never entered as such in the Record of the action now on appeal, and (b) requires her to obtain from the Court of Appeals a reversal of a "judgment" of which there is no documentation in the District court. Petitioner submits that the Court of Appeals, having denied her application for relief from the undertakings of the said bond, by sanction of its use, in effect, held her to those undertakings, which were possible of fulfillment only with the complete cooperation of the Court. The action of the Court of Appeals in withholding consideration and adjudication of the substantial issues raised by the appellant on appeal deprived her of opportunity to fulfill the undertakings to which the Court had held her bound.

(4) The Court of Appeals impairs defendant's rights when it contemplates returning this action, on mandate, to a District Court totally devoid of jurisdiction, and it thereby subjects the defendant to the prejudicial acts of unauthorized and irresponsible individuals:

In its decision on former appeal, in the action *Jarecki* v. *Whetstone,* 192 F. 2d 121, the Court of Appeals held that—

> "It is our duty to decide any question of jurisdiction whether or not the parties have raised it".

In that instance the Court of Appeals had denied the appellant's motion for a preliminary hearing on the substantial jurisdictional issues which she had raised, and it required her to proceed with the costly appeal, after which it dismissed the appeal on the ground that it lacked jurisdiction, because, in its opinion, the order appealed from was not a final order. And, it remanded the action, without determining the question of the jurisdiction of the

lower court, which had been challenged by appellant. The Court of Appeals has again withheld consideration and adjudication of the substantial jurisdictional questions raised by the appellant and once again, unless the decision of October 16, 1952, is reversed, the action will be remanded to a district court totally lacking in jurisdiction, where the defendant will be subjected to the prejudicial acts of unauthorized and irresponsible individuals who have denied her opportunity to defend; who have acted against her in violation of the law, and have shown no regard for her legal rights. It is established in law that a decree must be set aside when it determines a cause on the "merits" which should have been decided on jurisdiction. See *Whittemore* v. *Amoskeag Nat'l. Bank,* 134 U.S. 527, 530; *Piedmont & N.R. Co.* v. *United States,* 280 U.S. 469, 476.

SECTION II (a).

(5) The Court of Appeals rendered a decree in direct conflict with United States Supreme Court decisions, excluding from its consideration all controlling authorities presented by appellant:

It excluded the controlling authorities, cited and quoted in appellant's brief and arguments, which condemn, as unconstitutional, the procedures demanded by the order appealed from and the order alleged to have been contemned. See, for example, *United States* v. *White,* 322 U.S. 694, 699. The Court of Appeals acknowledged none of the seventy Supreme Court decisions cited by defendant in support of her position on the issues which she raised, and it rendered a decision in apparent conflict with them. *Of what benefit is the law and Supreme Court decisions interpreting it if our Federal courts may render their decisions in disregard of both.*

(6) The Court of Appeals held certain statutes to be "in full force and effect" without supporting its opinion, while it excluded from its consideration convincing evidence to the contrary, and controlling authorities with which its decision conflicts:

The Court of Appeals offers no controlling authorities to support its assertion that certain sections of the Internal Revenue Code, including Section 3615, "are in full force and effect", and it excludes from its consideration controlling authorities submitted by defendant which evidence the fact *that after the year* 1886, when the procedures contemplated by the said section were held to be repugnant to the Fourth and Fifth Amendments to the Constitution (*Boyd* v. *United States,* 116 U.S. 616), *there are no final decisions reported in the United States Code Annotated upholding the said sections, here involved,* (*i.e.,* Section 3654(a) and Section 3615(e) Internal Revenue Code) *in connection with the summoning of an individual taxpayer to testify against himself or to produce his own private books and papers. An unsupported opinion running against the current of such authority cannot stand.*

(7) The Court of Appeals rendered a decree sanctioning procedures which are commonly known, even by the layman, to be repugnant to the Constitution, and it excluded from its consideration the controlling authorities which established such repugnancy:

It sanctioned unconstitutional and injudicious conduct by the District court including—

Arrest of the defendant without a "probable cause".

Demand for compulsory self-disclosures of the defendant who was in court, under arrest for violating a Federal statute.

Demand for compulsory self-disclosures of the defendant, as the price for obtaining her liberty, after she was committed for an offense defined in the Criminal Code and listed therein under "Crimes and Offenses".

Denial of a hearing on defendant's Answer to the charge of violating a Federal statute.

Unlawful "dismissal" of defendant's suits in equity establishing defenses to the action in which she is charged with violating a Federal statute, and in which she had been denied a hearing on her Answer to the original charge.

Denial of the right of the defendant to object or defend in open court.

The decree rendered by the Court of Appeals is in conflict with controlling authorities presented by appellant in support of her position that the proceedings and acts above referred to are unsupportable and are repugnant to the **Fourth and Fifth Amendments to the Constitution.** See, for example, *Grau* v. *United States,* 287 U.S. 124, 127; *Counselman* v. *Hitchcock,* 142 U.S. 547, 564; *Boyd* v. *United States,* 116 U.S. 616; *United States* v. *White,* 322 U.S. 694, 699; *Freeland* v. *Williams,* 131 U.S. 405, 418; *Rees* v. *City of Watertown,* 19 Wall., 107, 122; *McVeigh* v. *United States,* 78 U.S. 259, 267, and many others. *The Court of Appeals by its decision would overrule the Constitution and install police-power in its stead.*

SECTION II (b).

(8) In conflict with a ruling in one of its own decisions, the Court of Appeals refused to inform the defendant of the nature of the action, or of the offense for which she was committed:

Before filing her brief on appeal, petitioner moved the Court of Appeals for a ruling as to whether the action on

appeal was civil or criminal. Her motion was denied, as was also her motion for reconsideration by a full panel of that court. Defendant contended that the action is criminal since contempt of court is an offense defined only in the Criminal Code, and it is listed in the index to the Criminal Code, under the heading "Crimes and Offenses"; and, the court must of necessity invoke its authority to punish for contempt from the Criminal Code. Referring to the defendant's arguments in this respect, the Court of Appeals stated, page 5 of its decision:

> "Although taxpayer's construction seems far-fetched and without merit, *we need not rest our decision on a ruling against the point she makes*". (Italics added)

A decision which refuses to inform the defendant of the nature of the charges against her cannot be justified (See *Tobin* v. *Pielet,* 186 F. 2d 886—7th Cir.). Defendant's rights and immunities under the law, the applicability of the bail bond to the instant action, and the proper procedure to follow in seeking further review or in defending her rights in the lower court, all depend upon such ruling. *The Court of Appeals sanctions commitment of defendant for an undefined offense.*

(9) The Court of Appeals excluded from its consideration the fact that the Record failed to affirmatively show the jurisdiction of the District Court to entertain the contempt proceedings:

It is established in law that any action, either civil or criminal, instituted in a Federal District Court, must affirmatively show statutory authority for invoking the jurisdiction of the court (See *Mattingly* v. *Northwestern Va. R. Co.,* 158 U.S. 53, 57), and it is also established that a Federal court may punish for offenses only when author-

ized by Federal statute. There was no showing in the Record of the District court of statutory authority for the contempt action. Further, petitioner has found no statutory authority, and the Court of Appeals has indicated none, for employing discrimination, as between civil and criminal rules of procedure, in meting out punishment to offenders under Section 401 of the Criminal Code—the prevailing law governing contempts. Authority under Section 401 is also limited to "punishment" by fine or imprisonment, *for the act done* which constituted the contempt defined. It does not authorize "remedial relief", "judicial sanctions" or coercive measures *to compel the doing of some act.* See *Kentucky* v. *Powers,* 201 U.S. 1, 24, in which the Supreme Court said:

> "Chief Justice Marshall, speaking in this court has said • • • 'courts which are created by written law and whose jurisdiction is defined by written law cannot transcend that jurisdiction'."

A reviewing court would find it difficult to justify its usefulness, were it privileged to withhold an interpretation of the statutes and a ruling on such an important question as the jurisdictional authority of the lower court. (See *Jarecki* v. *Whetstone,* 192 F. 2d 121—7th Cir.).

(10) Contrary to its earlier ruling in the case, the Court of Appeals entered a decree on the "merits", while it excluded from its consideration substantial questions raised by the appellant pertaining to jurisdiction:

In its decision on former appeal in the case *Jarecki* v. *Whetstone,* 192 F. 2d 121, the Court of Appeals held that it was its duty to decide any question of jurisdiction, but in its decision on second appeal, October 16, 1952, it withheld from consideration and adjudication all of the substantial jurisdictional questions presented by appellant.

One of these questions concerned the nature of the prayer of the original petition for defendant's arrest, in the action *Jarecki* v. *Whetstone,* which asked that the defendant be required "to show cause why she should not be held for contempt" (the only defense called for or permitted) for violating the said Section 3654(a) Internal Revenue Code. Since the District court is prohibited from punishing a violation of the said section by contempt process*, *it was without jurisdiction to grant the relief prayed for by plaintiff's petition.* The other substantial jurisdictional questions raised by appellant will be found herein under the heading "Questions Presented".

SECTION II (c).

(11) If, as the Court of Appeals implies in its decision, the action here is civil, local State laws were violated when defendant was taken into custody, and her identification was entered with Criminal Records:

Petitioner submits that due to the manner of her commitment there is included in the Records at the Cook County Jail, her finger prints and other identification which according to State laws (Ch. 38 Sections 603 and 604 of Illinois Criminal Code) may only be obtained where the party is charged with a crime. If the defendant was not charged with a criminal offense she should not have been subjected to such measures. The character of the action in which the defendant was committed should be declared.

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* See Title 28 U.S.C. Section 385—Now Title 18 U.S.C. Section 401.

SECTION II (d).

(12) The Court of Appeals directed its decision to an erroneous conception of the cause of action in the contempt proceedings:

The decision p. 1, states:

> "Defendant appeals from an order of the District court committing her for contempt for failure to appear before John T. Jarecki, the Collector of Internal Revenue for the First District of Illinois, *pursuant to summons issued by him*" etc.

This statement is incorrect. It should read: pursuant to *an order of the court* requiring the defendant to appear and testify before the collector, etc.

Petitioner submits that the *District court has no authority to punish by contempt process disobedience of a collector's summons. The law in fact forbids it.* (Title 18 U.S.C. Section 401).

Defendant was never ordered by the District court to comply with the collector's summons. She was not arrested in the original action, *Jarecki* v. *Whetstone,* for failure to comply with a collector's summons, but for violation of Section 3654(a) Internal Revenue Code. She was never held guilty of that charge. She was denied a hearing on that charge, and that charge is still pending. The order now alleged to have been contemned "was not a final order", *Jarecki* v. *Whetstone,* 192 F. 2d 121, 7th circuit.

Petitioner should not be deprived of her liberty by a decision based on an erroneous conception of the cause of action.

(13) The Court of Appeals based its decision on a hypothetical situation; not on facts presented in the Record:

Since violation of Section 3654(a) Internal Revenue Code constituted the only supported charge against defendant in plaintiff's petition, and that section provides its own peculiar "enforcement" methods by reference to Section 3615(e) Internal Revenue Code, the Court of Appeals erred in introducing other sections of that Code in an attempt to construct a new offense, not alleged or supported in the original petition, and it erred in attempting to augment the limited enforcement methods of Section 3615(e) with other sections extracted from the Code. *Constructive offenses are not recognized in the law and limited statutory authority may not be enlarged by the court.*

(14) The Court of Appeals affirmed the order of commitment while excluding defendant's showing that the warrant for her arrest did not charge an offense cognizable as such under the law, and that she was in court as the result of an illegal arrest:

The Court of Appeals excluded any mention, in its decision of October 16, 1952, of defendant's showing that the original action *Jarecki* v. *Whetstone,* which was instituted by a petition for body attachment, was illegal. Defendant, who was not at that time involved in any litigation in the courts, neither had been summoned by the court, was brought into court by the United States Marshal, by means of a warrant of arrest, *on a definite charge of violating a Federal statute.* That charge was thereafter abandoned without a hearing, but defendant was detained by the court. The Court of Appeals directed attention away from

the statute Section 3654(a) Internal Revenue Code, which the warrant for arrest charged defendant with violating, and which defendant has shown was not adequate as a "probable cause" for the issuance of a warrant of arrest, since it is not mandatory to the party summoned, nor its disobedience punishable as a offense. *In affirming the action of the District court, the Court of Appeals sanctioned this illegal arrest, which, being an invasion of defendant's constitutional immunities, may not be condoned.*

(15) The Court of Appeals, by its decision, sanctioned the unlawful acts of the District Judge whose order is alleged to have been contemned; and it sanctioned violation of generally effective equity restraints:

The Court of Appeals, in its decision, excluded any reference to the fact that the equity suits, brought by defendant under Title 28 U.S.C. Section 2284, as defense to the action *Jarecki* v. *Whetstone,* were dismissed by the substitute judge, J. Sam Perry, in direct violation of the prohibitions established by the said Section 2284, Subsection (5). It withholds mention of the fact that the said judge had refused to comply with the statute requiring him to have a three-judge court convened, *and that he dismissed the suits on the ground that he lacked jurisdiction, while refusing to comply with the law by which to obtain jurisdiction.* The Court of Appeals says appellant took no appeal from the orders "dismissing" these suits in equity. It is well known that an appeal in an action brought under Title 28 U.S.C. Section 2284 lies only from a decision of a statutory three-judge District court.

Issuance of the orders "dismissing" the equity suits was an unlawful act, therefore, it could not be construed as affecting the status of the suits in question, which still

remain on file in the District court. Since the restraints established by these suits are generally effective (See *Jones* v. *Securities and Exchange Commission*, 298 U.S. 1, 18), failure of the Court of Appeals to observe such restraints, having been fully advised concerning them, denied the defendant due process of law.

(16) The Court of Appeals sanctioned the injudicious conduct of the judge whose order is alleged to have been contemned:

The Court excluded from its consideration another pertinent fact; namely, that the substitute judge (who was also named as respondent in one of the equity suits established by defendant as a defense to the action *Jarecki* v. *Whetstone*) after unlawfully "dismissing" said suits, proceeded to "reinstate" the order which the trial judge refused to enforce—the order now alleged to have been contemned; *and that he entered the order, after incorporating changes therein prejudicial to the defendant, without permitting her to object or to defend in open court. An order entered under such circumstances could not be contemned,* and should not be supported by any court west of the "iron curtain".

(17) The Court of Appeals made vague statements in its decision which should be clarified and interpreted:

With reference to the nature of the contempt, and authority for punishment under Section 401 of the Criminal Code, the Court's decision, p. 5, states:

> "Although taxpayer's construction seems far-fetched and without merit, we need not rest our decision on a ruling against the point she makes, for certain it is that the revision of the Code in 1948, did not repeal Sections 3615, 3633 and 3711, Internal Revenue Code."

The decision here is too vague to be understood, but the court erred if it intended to imply that the District Court is authorized by any one of the said sections of the Internal Revenue Code to punish by contempt process disobedience of any of the procedures which they recite. Such construction could not possibly be read into these sections, and it is noted that the court did not attempt to so construe them. It is well established *that courts cannot supply omissions in Internal Revenue laws, and that it is not for the courts to add to legislation what Congress has pretermitted.* See *Iselin* v. *United States,* 270 U.S. 245, 251, and *United States* v. *Monia,* 317 U.S. 424, 430.

(18) The Court of Appeals rendered a decree but withheld an opinion and it offered no controlling authorities for its arbitrary action:

Its only decisive statement appears on page 6 of its decision of October 16, 1952:

> "We hold that the District Court's order of January 15, 1952, was in accordance with the language of Section 3615(e) Internal Revenue Code, and was a lawful order, and further that the court's order of commitment when taxpayer refused to comply with its order of January 15, 1952, was an appropriate order under the circumstances. *Penfield Company of Calif.** *et al.,* v. *Securities and Exchange Commission,* 330 U.S. 585".

After excluding all consideration of the substantial issues raised by appellant, establishing a different conclusion,

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* Note: A Corporation is not entitled to claim the privileges of an individual under the Fourth and Fifth Amendments to the Constitution. See **Oklahoma Press Publishing Company v. Walling, 327 U.S. 186, 205.**

the Court of Appeals "held" that the order alleged to have been contemned was a lawful order, because it "is in accordance with the language of Section 3615(e) Internal Revenue Code". The Court, however, does not expound the law. It does not offer any authorities for such conclusion, neither does it show *wherein the order* alleged to have been contemned "is in accordance with the language of Section 3615(e)." *That which is as important to every individual, as liberty, should not be traversed by so casual a deduction.*

(19) The Court of Appeals based its decision upon, and thereby sanctioned, the injudicious procedures recited by Section 3615 (e) Internal Revenue Code, as employed by the District Court.

It excluded from consideration the arguments of the appellant which clearly indicate that the methods of procedure set forth in the said Section 3615(e), employed against defendant, constitute a travesty upon jurisprudence. That section instructs the collector to petition the court for an attachment against a citizen "as for contempt" on a charge of violating a collector's summons, *for which "violation" the court is forbidden to punish by contempt process* (See Former Section 385 of Title 28, Now Section 401 of Title 18). It recommends (it confers no power) the arrest of the said citizen for an alleged offense (violation of Section 3654(a) Internal Revenue Code in the instant case) which is not cognizable as an offense in the law, and it instructs the court, after defendant has been brought before it on a warrant, thus issued without "probable cause", to abandon that charge, and to proceed to enter an order. (It is not specific here except that the order be "not inconsistent with the law for the punishment of con-

tempts"). *This method of "shanghaing" the defendant into court is intended to provide the court with opportunity to create the occasion for a new offense for which it may punish the one already illegally apprehended.* A statute setting forth procedures which contravene the law cannot be upheld as providing for a "lawful order". It is held by controlling authorities that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. *Bailey* v. *Alabama,* 219 U.S. 219, 239.

(20) The Court of Appeals in its decision is non-committal as to whether the order of commitment is a lawful order.

The mere statement by the Court of Appeals that the order of commitment "was an appropriate order under the circumstances" parries the question presented by defendant as to whether it is a lawful order (defendant being in court as the result of an illegal arrest); whether it is an order which the District court, under the limitations of Title 18 U.S.C. Section 401, had authority to enter, and whether it is an invasion of the rights and immunities of the defendant under the law; all points specifically argued by appellant. *The word "appropriate" is subject to many interpretations. Where the defendant's liberty hangs upon a word—that word should be free from ambiguity.*

(21) The Court of Appeals in its decision affirms that which is intangible:

In its decision of October 16, 1952, the Court concludes with the single word "affirmed" and leaves unexplained *what it has affirmed.* There was no opinion rendered by the District court. There is no documentary evidence of

any judgment having been entered by that court. The decision of the District court is "unreported". The findings, conclusions and order of commitment were not prepared by the court, but were prepared in advance of the hearing by opposing counsel and were handed to the court during the hearing. The court did not read the order before committing the defendant. The only decisive action of the District court which the Court of Appeals could affirm is the statement (Rec. 57):

> "So the order of the court will be that she will be committed to the custody of the Attorney General, and this order will be executed".

No statement was made from the bench as to why defendant was being committed, of what offense she was guilty, or that she was guilty of any offense, or what her sentence would be. A mere affirmation by the Court of Appeals of what appears to be intangible is insufficient as a basis for depriving a defendant of her liberty. The Court of Appeals may concur in the District Court's order to commit the defendant (without a judgment of guilt) but its reason for such concurrence must be based on the law, and the law should be declared. *The courts have read no law into this case although it has been in prosecution for over four years. Defendant is entitled to have interpreted for her the law which deprives her of her liberty.*

Wherefore, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Court, directed to the United States Court of Appeals for the Seventh Judicial Circuit, commanding said court to certify and send to this Court, on a date to be designated, a full transcript of the record and all proceedings of the Court of Appeals had in this cause, to the end that this

cause may be reviewed and determined by this Court, as to the questions herein presented, that it may take notice as provided by Rule 12(b) (2) of the Rules of Criminal Procedure (see also Rule 12(h) of the Rules of Civil Procedure) of the showing made by petitioner, in this petition now before this Court, in this pending action, of the lack of jurisdiction of the District court to grant the relief prayed for, and the failure of the information filed against the defendant to charge an offense cognizable as such in the law, and your petitioner prays that the decree of the Court of Appeals be reversed, and that court be directed to remand the action to the District court with instructions to dismiss both the contempt action herein and the original contributory action, for lack of jurisdiction, and that it be directed to vacate the order of commitment against your petitioner, and your petitioner prays for such other and further relief as may to this Court seem proper.

Respectfully submitted,

Irene B. Whetstone.

IRENE B. WHETSTONE.

Pro se

Dated, Chicago, Illinois
December 5, 1952

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

There was no opinion rendered by the District court. Its order was not reported. The court's order of commitment was given orally from the bench. It appears on page 57 of the record. The draft order appearing on pages 58-60 of the record, comprising the "court's" findings, conclusions and sentence, was prepared in advance of the hearing by opposing counsel, was handed to the court during the hearing, and was not read by the court prior to its oral order of commitment.

The "opinion" of the Court of Appeals, in process of publication but reference not yet available, appears on pages 115-120 of the record. The third paragraph from the end contains the only decisive statement made in the decision and may have been intended as an opinion.

Jurisdiction.

A Jurisdictional Statement appears in the accompanying petition, and for the sake of brevity is omitted here.

Statement of the Case.

A statement of the facts material to the consideration of the questions presented appears in the petition and for the sake of brevity is omitted here.

Specification of Errors.

The United States Court of Appeals for the Seventh Circuit in affirming the District court's order of commitment, while withholding consideration and adjudication of the substantial issues raised by the appellant (your petitioner) on appeal, committed a series of errors, of which petitioner will urge the following:

(1) it (the court) deprives your petitioner of her liberty without due process of law, by withholding its notice of the showing made by your petitioner, that she was in the court as the result of an illegal arrest (a) on a charge which did not constitute an offense, (b) ordered by a court which lacked jurisdiction to grant the relief prayed for;

(2) it upheld an invasion of your petitioner's rights and immunities under the law and under the Fourth and Fifth Amendments to the Constitution, and withheld acknowledgment of her claim of immunity;

(3) it impaired the obligations of a contract (bail bond) and prejudiced your petitioner's rights thereunder;

(4) it subjects your petitioner to the prejudicial acts of unauthorized and irresponsible individuals by returning the action to a District court which lacks jurisdiction;

(5) it established a decree in direct conflict with United States Supreme Court decisions, with its own rulings and those of other Circuit courts;

(6) it upheld as being in "full force and effect" a statute employed against your petitioner which has been legally ineffective for over 66 years in connection with compelling self-disclosures from an individual taxpayer;

(7) it sanctioned procedures employed against your petitioner commonly known to be repugnant to the Constitution, such as arrest without "probable cause", denial of due process, and compulsory self-disclosure, and it withheld acknowledgment of time-honored controlling authorities establishing such repugnancy;

(8) it refused to inform your petitioner whether the contempt action brought against her is civil or criminal;

(9) it refused to inform your petitioner as to the statutory authority invoked by the District court in committing her for contempt;

(10) it refused to consider, and it withheld adjudication of substantial issues raised by appellant (your peti-

tioner) concerning the lack of jurisdiction of the District court;

(11) it sanctioned violation of local laws;

(12) it set forth a completely erroneous conception of the cause of the contempt action in its decision of October 16, 1952;

(13) it adopted a hypothetical situation, not the facts presented in the record, as a basis for its decision, attempting thereby to construct a new offense and enlarge the court's authority;

(14) it sanctioned defendant's (your petitioner's) arrest on a warrant issued without probable cause;

(15) it sanctioned the unlawful "dismissal" by the District court judge whose order is alleged to have been contemned, of your petitioner's established defenses (suits) in equity, and it sanctioned the violation of equity restraints;

(16) it sanctioned the injudicious conduct of the District judge who reinstated the order alleged to have been contemned and incorporated a vital change therein without permitting your petitioner to object or defend in open court;

(17) it attempted to read into statutes employed against your petitioner that which Congress has pretermitted;

(18) it based its decision, which deprives your petitioner of her liberty, upon a casual deduction;

(19) it supported the transgression of a constitutional prohibition upon a statutory presumption, upholding the unlawful and injudicious procedures recited by Section 3615(e) Internal Revenue Code;

(20) it rested its decision, which deprives your petitioner of her liberty upon the word "appropriate", a word which may be variously interpreted.

(21) it affirmed that which is intangible;

(22) it erroneously ordered the substitution of Ernest J. Sauber, Director of Internal Revenue, as plaintiff-appellee, in place of John T. Jarecki, Collector of Internal Revenue;

(23) it denied reconsideration, by a full panel of the court, of vital issues decided by one judge;

(24) it departed from the accepted and usual course of judicial procedure, and it sanctioned such departure by the District court;

(25) The United States Court of Appeals in its decree of October 16, 1952, erred in holding the order alleged to have been contemned "lawful" and the order of commitment "appropriate";

(26) it erred in concluding its decree with the word "affirmed".

Note: These errors to be urged by petitioner follow the same sequence as the "Reasons Relied upon for a Grant of a Writ of Certiorari" (see petition). The number identifying an error, as above, is in agreement with a corresponding number applied to a "Reason" where more specific detail is set forth.

Summary of Argument.

Arguments follow in general the arrangement of the reasons relied upon for the grant of a writ of certiorari; namely, Section I, Section II, (a), (b), (c) and (d), as stated on page 19 of the petition. A summary of the argument also appears in the index. For the sake of brevity it is omitted here.

ARGUMENT I.

The rule, which reads: "Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding", is a statement of law* which makes it incumbent upon this Court to take notice of such showing, presented herein, since the action is still pending and the showing is before this Court on petition. It is well established that discretionary power shall give place to statutory rights.

(1) It is your petitioner's position that the District court had no jurisdiction to enter the order of commitment (R. 58-60); that defendant was in court solely as the result of an illegal arrest, on a charge which did not constitute an offense, and, the court was totally lacking in jurisdiction to entertain the original action; that the order alleged to have been contemned (R. 37) was, therefore, not a "lawful" order, and disobedience of it was not an offense, see Title 28 U.S.C. Section 401 (See Appendix). In support of this position petitioner shows:

(a) that the original petition for body attachment (R. 6) in the contributory action, *Jarecki* v. *Whetstone,* dated January 5, 1948, by which defendant was in court, *contained only one supported charge* (R. 6-9), namely, that the defendant violated Section 3654(a) Internal Revenue Code (See Appendix);

(b) that Section 3654(a) (R. 8) is not mandatory as to the party "summoned"; it establishes no punitive measures for disobedience of its recitations, and itself provides *prima facie* evidence that it could not have been violated by petitioner;

---

* Rule 12(b) (2) Rules of Criminal Procedure. Enacted into law pursuant to the Act of June 25, 1948, c. 645, 62 Stat. 683—Title 18 U.S.C. 3771.

(c) therefore, the petition for defendant's arrest did not charge an offense cognizable as such in the law. Such charge did not constitute a "probable cause" for the issuance of a warrant of arrest.

(d) *defendant's arrest for violation of the said Section* 3654(a) *was illegal.*

(2) Further in support of this position, petitioner shows:

(e) that Section 3654(a) sets forth its own *enforcement provisions* by reference to Section 3615(e) Internal Revenue Code (See Appendix) and those provisions may not be enlarged;

(f) that plaintiff's petition (R. 6) invoked the said Section 3615(e) and prayed the court to require defendant to "show cause why she should not be held for contempt" (the only defense called for or permitted) for disobedience of a collector's summons—an alleged violation of said Section 3654(a);

(g) that the District court is prohibited by Section 3615(e) from punishing "disobedience" of a collector's summons, or "violation" of the said Section 3654(a) by contempt process, see the "law for the punishment of contempts", Title 28 U.S.C. Section 385, now supplanted by Title 18 U.S.C. Section 401 (See Appendix).

(h) *therefore the said Section* 3615(e) *provides prima facie evidence that the District court lacked jurisdiction to grant the relief prayed for by plaintiff's petition.*

(3) Petitioner prays this Court to grant a writ of certiorari in order that it may take proper notice of the foregoing showing in accordance with the provisions of law as first above recited. There is nothing of greater importance to the people of this Republic than to be assured by its Supreme Court that no citizen may be deprived of his liberty while being denied any one of the rights and immunities written into the law for his protection.

(4) Rule 12(b) (2) of the Rules of Criminal Procedure, uses the permissive word "shall" in the phrase "shall be noticed by the court at any time". "Permissive words in respect to courts or officers are imperative in those cases in which the public or individuals have a right that the power so conferred be exercised" *Rock Island County* v. *United States,* 4 Wallace, 435, 445, and, see also *Mason* v. *Fearson,* 9 How. 248, 259. Therefore this rule established by this Court and enacted into law takes precedence over the discretionary power of this Court in the matter of granting the accompanying petition for a writ of certiorari. "Where the statute contains no exceptions, the court cannot create one". *Hyde* v. *Skine,* 199 U.S. 62, 78.

ARGUMENT II.

A constitutional right or immunity is a heritage shared in common by every citizen of the United States of America. That heritage should be impartially administered by the courts.

(1) With no court action pending against her, *defendant,* in the action *Jarecki* v. *Whetstone,* 48 C 1 (N.D. Ill.), *was arrested for alleged violation of a Federal statute,* and, without a hearing on her Answer to that charge, *was ordered by the court* (R. 19, 12 and 37) *to give testimony and disclose property which she would then be required to forfeit.*

(2) While under arrest for the alleged violation of which she was never held guilty, *the defendant was committed to jail* in a contempt proceedings for alleged disobedience of the aforesaid order of the court (R. 37); *and, the order of commitment* (R. 58-60) also *required the defendant to give testimony under oath and produce evidence to be used against her, as a price for obtaining her liberty.* This Court said in *Boyd* v. *United States,* 116 U.S. 616, 631, 632:

"Compulsory discovery, by extorting the party's oath or compelling the production of his private books and papers to convict him of crime *or to forfeit his property,* is contrary to the principles of a free government * * *. It may suit the purpose of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom". (Italics added.)

See also *Counselman* v. *Hitchcock,* 142 U.S. 547, 564.
United States v. *White,* 322 U.S. 694, 699.

(3) Petitioner submits that the statute she was charged with violating, Section 3654(a) Internal Revenue Code (See Appendix), describes investigative procedures which are in contemplation of and preliminary to the "detection and punishment of any frauds". *Thus that statute is dedicated in advance to a criminal action and is invalid on its face.* A court should be solicitous to discharge a contemnor when important constitutional objections are renewed. *Hoffman* v. *United States,* 341 U.S. 480, 489; *Gouled* v. *United States,* 255 U.S. 298, 313.

ARGUMENT III.

A court vested with the power to dispense equity should itself do equity. This Court should exercise its supervisory power to constrain the doing of equity by our Federal courts.

(1) A bail bond is in effect a contractual obligation. Where the court holds a defendant bound to the undertakings of such a bond, and fulfillment of those undertakings requires the cooperation of the court, the court is morally obligated to provide such cooperation. If it does not, it impairs said contractual obligations and deprives the defendant of her rights thereunder. (See petition, Reason (3)*). For detail as to bail bond (R. 97) see

* Where reference is made to "Reason" number it refers to Reasons Relied upon for Grant of Writ of Certiorari, accompanying petition.

Application for Relief with Respect to Bail Bond (R. 92).

(2) The United States Court of Appeals, attempts to dispose of the body-attachment action, *Jarecki* v. *Whetstone*, and the contempt proceedings which followed, by a decree on the "merits", where the cause should have been determined on the substantial jurisdictional issues raised on appeal. (See "Jurisdictional Statement" accompanying petition). This court has repeatedly held that such a decree should be set aside. *Whittemore* v. *Amoskeag Nat'l. Bank*, 134 U.S. 527, 530; *Piedmont & N.R. Co.* v. *United States*, 280 U.S. 469, 476. (See Petition, Reason (4).)

ARGUMENT IV.

The integrity and ministration of our Federal laws is a matter of vital public concern. Nothing more directly affects the personal lives of every citizen of the Republic. Where there is such obvious derogation of the law and digression from the standards established for maintaining its uniformity, as in the instant case, it calls for prompt action by this Court to restore public confidence in our judicial system.

(1) The United States Court of Appeals rendered its decree in this cause in direct conflict with applicable decisions of the United States Supreme Court, while withholding acknowledgment of those controlling authorities presented to it by your petitioner (See petition, Reasons 5, 6 and 7). Your petitioner is submitting with this petition copies of her brief on appeal to the United States Court of Appeals for the Seventh Circuit, in order to confirm her statements with respect to the arbitrary action of that court in "overruling" Supreme Court decisions presented to it by petitioner. Petitioner submits that the Court of Appeals, in effect, has thwarted the very purpose of this Court by its arbitrary action. *This Court should*

intervene to prevent the demoralizing effect of such confusion in the administration of the law.

(2) The Court of Appeals for the Seventh Circuit, rendered a decree in conflict with its own earlier decisions, and in conflict with decisions rendered by other circuits (see petition, Reasons 8, 9 and 10). It refused to reconcile these inconsistencies (R. 122) which your petitioner called to its attention (R. 121) and it withheld adjudication of the issues raised by your petitioner, wherein these earlier rulings supported your petitioner's position. *Rulings which vary with the mood of the court provide a most precarious foundation for a system of law. This Court should intervene to prevent such inconsistencies from multiplying.*

ARGUMENT V.

The rights of a citizen under local State laws should be observed by Federal Courts, and if they fail to recognize such rights this Court should intervene to prevent the general deterioration or respect for local laws.

The State of Illinois protects its citizens against the possibility of their personal identification being included with criminal records, by a law (ch. 38, Sections 603 and 604 of Illinois Criminal Code) which limits the procurement of such identification, as finger-printing, to citizens who have been charged with a crime or have been convicted of a crime (see petition, Reason 11). This Court should take the necessary action to see that the Federal government does not invade a defendant's rights and immunities under the local laws.

ARGUMENT VI.

In the instant case the Court of Appeals failed to function as a reviewing court, and deprived your petitioner of her right of review.

The Court of Appeals withheld adjudication of the substantial issues raised by appellant on appeal; it based its decision (R. 115), depriving a defendant of her liberty, upon an erroneous concept of the cause of action (see petition, Reason 12); it abandoned the facts in the record (see petition, Reason 13) and meticulously avoided mention of the one supported charge against the defendant (petition, Reason 14), and, it constructed a new offense (See *Todd* v. *United States,* 158 U.S. 278, 278) and attempted to enlarge the District court's authority by introducing other statutes not involved (see Footnote, R. 115); it rendered a decree, depriving defendant of her liberty, comprised of vague statements (petition, Reason 17), casual deductions (petition, Reason 18) and the presumption of statutory validity (See *Bailey* v. *Alabama,* 219 U.S. 219, 239) unsupported by legal authorities (petition, Reason 19); it failed to indicate what it affirmed (petition, Reason 21); it refused to inform the defendant of the nature of the charges against her (whether civil or criminal) (R. 92 and 119) (See *Tobin* v. *Pielet,* 186 F. 2d 886, 7th Cir.) (petition, Reason 8); it held her to an inapplicable bail bond (R. 112) the undertakings of which it rendered impossible for her to fulfill (petition, Reason 3) and it permitted the continued prosecution of the illegal action by ordering (R. 112) the substitution of a new plaintiff-appellee in contravention of generally effective restraints, and without adjudication of the points of law raised by appellant's objections (R. 105-111). Your peti-

tioner submits that the foregoing departures from the accepted and usual course of judicial proceedings constitute a complete abandonment by the Court of Appeals of its proper function as a reviewing court, see *Post* v. *Jones,* 19 How. 150, 160, and your petitioner, whose liberty is in jeopardy, is deprived of her right of review. The need for the exercise of this Court's power of supervision is obvious, in order to preserve the right of review of judicial proceedings.

ARGUMENT VII.

A costly record of the proceedings in the District court was preserved and submitted in the instant case to the Court of Appeals. It bears evidence of inexcusable departures by the District court from the accepted and usual course of judicial proceedings. With this record before it no court of review should fold its hands and look the other way.

There is compelling need for the exercise of this Court's power of supervision where the Court of Appeals has sanctioned drastic departures by the District court from the accepted and usual course of judicial proceedings, as in the instant action; where the District court arrested your petitioner without probable cause; entertained an action in which it lacked jurisdiction to grant the relief prayed for; denied the defendant a hearing on her Answer; and, without holding her guilty of any offense, ordered her to testify and produce evidence against herself; and, where the trial judge refused to enforce his order, and the District court transferred the action to a substitute judge, who, after unlawfully* "dismissing" your

* In violation of the prohibitions of Title 28 U.S.C. Section 2284(5).

petitioner's established defenses (suits) in equity (which sought to restrain execution of the said order) "reinstated" it, incorporating a vital change, without permitting the defendant to object or defend in open court; and, where the substitute judge, at the contempt hearing for "disobedience" of said order (the lawfulness of which had never been established by any court) committed the defendant (your petitioner) without adjudging her guilty of any offense or imposing sentence, and thereafter entered the findings, conclusions and sentence, prepared in advance of the hearing by opposing counsel (See *Hill* v. *United States*, 298 U.S. 460, 464-466) as an order of commitment, requiring defendant to testify and produce evidence against herself as the price of liberty; and where the proceedings were otherwise improperly conducted. For more specific detail see Petition, Reasons 1, 2, 6, 7, 10, 14, 15, 16, 19 and 21.

The departures by the District court from the accepted and usual course of judicial proceedings constitute digressions from basic principles and fundamental standards upon which our system of law depends. To recount them to one versed in the law is sufficient to condemn them. Nevertheless your petitioner submitted a substantial showing of controlling authorities to evidence their unconstitutional and injudicious nature, as will be seen from her brief on appeal to the United States Court of Appeals for the Seventh Circuit, which accompanies this petition.

Petitioner submits that the drastic departures by the District court from the accepted and usual course of judicial proceedings, as sanctioned by the Court of Ap-

peals, were the rule, not the exception. A review of the case by this Court would evidence the urgent need for exercise of this Court's supervisory power.

CONCLUSION.

Wherefore, petitioner earnestly prays that notice be taken (in accordance with Rule 12(b) (2) of the Rules of Criminal Procedure and Rule 12(h) of the Rules of Civil Procedure) of the showing made by petitioner, of the District court's lack of jurisdiction to entertain the action, and of the failure of the information or petition, by which your petitioner was arrested, and by which she was committed, to charge an offense cognizable as such under the law; that the petition for writ of certiorari be granted, the case be reviewed, and the decree of the Court of Appeals for the Seventh Circuit be reversed and that court be directed to remand the cause to the District court with instructions to dismiss both the contempt action and the original contributory action, for lack of jurisdiction, and to vacate the order of commitment against the defendant, and your petitioner prays for such other and further relief, including relief in the matter of costs, as may to this court seem proper.

Respectfully submitted,

Irene B. Whetstone.

.....

IRENE B. WHETSTONE.

Pro se.

APPENDIX.

Internal Revenue Code

SEC. 3654. GENERAL POWERS AND DUTIES RELATING TO COLLECTION.

(a) *Collectors.* Every collector within his collection district shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention detection, and punishment of any frauds in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel compliance with such summons in the same manner as provided in section 3615.

* * *

(26 U.S.C. 1946 ed., Sec. 3654.) (53 Stat. 446)

SEC. 3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.

* * *

(e) *Enforcement.* Whenever any person summoned under this section neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an

attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience. (26 U.S.C. 1946 ed., Sec. 3615). (53 Stat. 439)

CRIMES AND CRIMINAL PROCEDURE

Chap 21 CONTEMPTS

Sec. 401. Power of Court.

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

18 U.S.C. 1946 ed., Sec. 401—Sup. V. Jan. 3, 1947)

JUDICIAL CODE

SEC. 385. (Judicial Code Sec. 268) ADMINISTRATION OF OATH; CONTEMPTS.

The courts of the United States shall have power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near

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thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness or other person to any lawful writ, process, order, rule, decree or command of the said court.

(28 U.S.C. 1940 ed., Sec. 385) (Mar. 3, 1911 ch. 231, Sec. 268 36 Stat. 1163).

NOTE: Sec. 385 of Title 28 now 401 of Title 18 by an Act of June 25, 1948 62 Stat. 80th Cong. 2d session, Ch. 645, to revise, codify and enact into positive law, Title 18 of United States Code entitled "Crimes and Criminal Procedure".

SEC. 455. INTEREST OF JUSTICE OR JUDGE.

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness. • • •

(28 U.S.C. 1946 ed., Sec. 455—Sup. V. January 3, 1947)

SEC. 2284. THREE-JUDGE DISTRICT COURT; COMPOSITION; PROCEDURE.

• • •

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final

judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing. • • •

(28 U.S.C. 1946 ed., Sec. 2284—Sup. V. Jan. 3, 1947)

Federal Rules of Civil Procedure VII Judgment

Rule 63. DISABILITY OF A JUDGE.

If by reason of death, sickness, or disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(This rule adapts and extends the provision of U.S.C. Title 28 Sec. 776 • • • to include all duties to be performed by the judge after verdict or judgment. The statute is therefore superseded.)

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Appellant's Exhibit 23 (k) as included in certified record —in the following words and figures, to wit:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Monday, December 3, 1951

PRESENT: Honorable J. Sam Perry, District Judge

Irene B. Whetstone,)
Plaintiff,)
v.) No. 51 C 269
John T. Jarecki,)
Defendant.)

On motion of the Government it is Ordered that this cause be dismissed.

Appellant's Exhibit 23 (m) as included in certified record in the following words and figures, to wit:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Tuesday, January 8, 1952

PRESENT: Honorable J. Sam Perry, District Judge

Irene B. Whetstone,)
Petitioner,)
v.) No. 51 C 1988
J. Sam Perry,)
Respondent.)

and "his successor, and those in active concert and participation with him" as follows:

John P. Barnes, Philip L. Sullivan, Michael L. Igoe, William J. Campbell, Walter J. LaBuy, William H. Holly.

On motion of the Respondent it is Ordered that this cause be dismissed.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 490

IRENE B. WHETSTONE, PETITIONER

v.

ERNEST J. SAUBER, DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the district court committing the petitioner for contempt (R. 58-60) is not reported. An earlier opinion of the district court treating many of the issues herein is reported at 82 F. Supp. 367. The opinion of the court of appeals (R. 115-120) is not yet reported.

JURISDICTION

The judgment of the court of appeals (R. 121) was entered on October 16, 1952. A petition for rehearing filed October 31, 1952 (R. 121), was denied

on November 8, 1952 (R. 122). The petition for a writ of certiorari was filed on December 8, 1952. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

The question presented is whether, under the particular facts here involved, the district court had authority to commit the petitioner taxpayer for contempt until she should obey its order directing her to appear before the Collector (now Director) of Internal Revenue with her books and records and to give testimony in connection with the latter official's effort to collect from her the unpaid balance of her federal income tax for the calendar year 1944.

STATUTE INVOLVED

The applicable provisions of the Internal Revenue Code are printed in the Appendix, *infra*, pp. 12-15.

STATEMENT

On January 5, 1948, John T. Jarecki, then Collector of Internal Revenue for the First District of Illinois,[1] filed a petition in the United States District Court for the Northern District of Illinois in which he alleged that on November 3, 1947, a collector's summons, issued pursuant to Sections 3615 and 3654 of the Internal Revenue Code, had been served upon the petitioner Irene B. Whetstone,

[1] John T. Jarecki has been succeeded in his official position by Ernest J. Sauber, whose title is Director of Internal Revenue, Chicago. Director Sauber was substituted as plaintiff-appellee in the court below. (R. 102-103, 112.)

summoning her to appear before him on November 17, 1947, and to testify and to produce books and records, in aid of an investigation pertaining to the collection of her income tax for the year 1944. The petition further alleged that the taxpayer Whetstone had full knowledge of the obligations imposed upon her by such summons and the necessity for obedience on her part, but that, regardless of such knowledge, she failed to appear at the time and place designated in the summons, and did not on that date or at any time thereafter appear and give any cause or reason for her failure to appear. The petition was accompanied by appropriate supporting documents.[2] (R. 6-9.)

A writ of attachment was issued the same day, January 5, 1948, and was executed January 6, 1948. After hearing, the cause was continued and the taxpayer was released on her own recognizance. (R. 2, 10-12.)

On January 23, 1948, the taxpayer filed a motion to dismiss the Collector's petition, which motion was denied on November 15, 1948 (*Jarecki* v. *Whetstone,* 82 F. Supp. 367 (N.D. Ill.)), and on December 2, 1948, the taxpayer filed her answer. (R. 2-3.) On May 3, 1949, the district court, on motion of the Collector, entered an order (R. 19-21)

[2] The tax here involved was a part of the income tax shown on petitioner's return for 1944 and was duly assessed by the Commissioner of Internal Revenue on July 14, 1945. On June 29, 1952, within the time required by Section 276(c) of the Internal Revenue Code, the United States filed a suit against the petitioner in the District Court for the Northern District of Illinois (*United States* v. *Irene B. Whetstone,* No. 51 C 1057) to collect this tax, which suit is still pending.

directing the taxpayer to appear before the Collector with her books and records on a day specified therein and to give testimony with respect to the Collector's efforts to collect the unpaid balance of her 1944 income tax liability. This order was vacated, without objection by the Collector, on May 6, 1949.[3] On February 12, 1951, the district court granted a motion by the Collector to reinstate the order of May 3, 1949, with appropriate changes with respect to dates and place for the taxpayer's appearance, and ordered the taxpayer to appear before the Collector on February 23, 1951, with her books and records and to give testimony on all matters and facts within her knowledge in connection with the Collector's efforts to collect her 1944 income tax. (R. 12-13.) The taxpayer appealed from that order and, after ordering a stay of execution, the Court of Appeals for the Seventh Circuit in an opinion entered November 6, 1951, held that the order of February 12, 1951, was an interlocutory order from which appeal would not lie. *Jarecki* v. *Whetstone,* 192 F. 2d 121. It therefore dismissed the appeal and vacated its order staying proceedings in the district court. (R. 17.)

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[3] The Collector did not object to the vacating of this order because of the pendency of a refund suit involving 1944 and other years which the taxpayer brought subsequent to the filing of the petition in this proceeding. See *Whetstone* v. *United States*, 82 F. Supp. 478 (N.D. Ill.), affirmed without opinion, April 28, 1949 (C.A. 7th), certiorari denied, 337 U.S. 941, rehearing denied, 338 U.S. 840. Further delay in obtaining reinstatement of the order of May 3, 1949, was due primarily to other litigation subsequently instituted by the taxpayer. The opinion below sets forth this ancillary litigation (R. 118, n. 3).

Following the issuance of the mandate of the court of appeals, the district court, on January 15, 1952, on motion of the Collector, entered an order reinstating the order of February 12, 1951, with appropriate changes with respect to the dates and place for the taxpayer's appearance, and ordered her to appear before the Collector at his office on January 18, 1952, with all books and records in her possession which would disclose her personal financial condition, and to give testimony on all matters within her knowledge with respect to the Collector's efforts to collect her 1944 income tax. The parties were directed to appear in court on January 21, 1952, and report on whether the taxpayer had complied with the court's order. (R. 36-39.)

On January 22, 1952, the Collector filed a motion in the district court (R. 40-42) in which he stated that the taxpayer had not appeared before him nor testified nor produced her books and records as required by the order of January 15, 1952, and asked that she be adjudged in contempt and punished, for civil contempt, for disobedience to the court's order. On January 24, 1952, the taxpayer filed lengthy objections to the Collector's motion (R. 42-48), and a hearing was had on the motion on January 30, 1952 (R. 48-57). At this hearing, the taxpayer refused to be sworn and testify, and also announced her refusal to appear before the Collector and to give testimony as ordered on January 15, 1952. (R. 52-53) The district court thereupon entered an order (R. 58-60) in

which it found that the taxpayer's failure and refusal to comply with the order of January 15, 1952, was without just cause, and that by her refusal to obey that order, she was in contempt of court. Accordingly, the district court ordered that the taxpayer be committed to the custody of the Attorney General of the United States until she should purge herself of that contempt by complying with the court's order.

The Court of Appeals for the Seventh Circuit sustained the district court's order of commitment for contempt of court. (R. 115-120.) It is review of this affirmance which is sought by the petition for writ of certiorari.

ARGUMENT

This case presents no ground which would warrant the granting of a writ of certiorari. The prolixity of taxpayer's statement of the questions presented (Pet. 13-19) and of her discussion of the reasons relied upon for the granting of a writ (Pet. 20-37) makes it inordinately difficult to determine what her grievance is. Scanned with care, it seems to be simply that she does not want to furnish information which will enable the Government to collect the unpaid balance of her 1944 income tax,[4] and does not want to be committed for contempt of court on account of her refusal to fur-

[4] Petitioner's principal objection to the payment of her tax is that the revenue turned over to the Treasury from the collection of taxes is allegedly being expended for seven purposes, all of which are claimed to be outside the purview of the Constitution. *Whetstone* v. *United States*, 82 F. Supp. 478, 479; see also record on petition for writ of certiorari, No. 826, 1948 Term.

nish that information upon order of the district court. But the district court had unquestionable jurisdiction to enter the order of January 15, 1952, which directed her to appear before the Collector with her books and records and to give testimony concerning her finances which would aid the Collector in his efforts to collect this unpaid tax. And, since the taxpayer defiantly refused to comply with that order, without good cause shown, the district court clearly had the power to have her committed until she should purge herself of the contempt by complying with the order.

Section 3654(a) of the Internal Revenue Code (Appendix, *infra*, pp. 14-15) requires Collectors to see that within their collection districts all laws and regulations relating to the collection of internal revenue taxes are complied with, and in aid thereof authorizes them to issue a summons such as was issued in the instant case. Section 3615(a) of the Code (Appendix, *infra*, p. 12) provides general authority for Collectors to issue a summons, and Section 3615(e) (Appendix, *infra*, pp. 13-14) provides for enforcement of the summons in the manner here adopted, when the person summoned fails or refuses to obey the Collector's summons.

The petition filed in the district court in this case by the Collector (R. 6-7) alleged the issuance and service of the summons and the taxpayer's failure or refusal to comply with it. It asked that the taxpayer be brought before the court to show cause why she should not be committed for contempt for failure to comply with the summons, and for "such

other and further relief in the premises as to this Court shall seem meet" (R. 7). At the hearing before the district court, taxpayer not only announced her refusal to comply with the Collector's summons, but also refused to be sworn and testify in the court (R. 52-53). Taxpayer was thereupon committed until she should comply with the order of the court.[5]

There is no merit to the contention that the court's order of January 15, 1952, violates any of the privileges and immunities guaranteed to the taxpayer by the Fourth and Fifth Amendments to the Constitution. Since the decision of this Court in *Murray's Lessee* v. *Hoboken Land & Improvement Co.,* 18 How. 272, the courts have uniformly recognized the right of the United States to collect its internal revenue by summary process. Sections 3615 and 3654 comprise a part of the statutory system governing such summary collection. The authority vested in the courts and in Collectors of Internal Revenue by these and other provisions of the internal revenue laws, in aid of such summary collection, is entirely reasonable.

The Collector's summons and the order of January 15, 1952, which are in full accordance with the statute, do not authorize any unreasonable search or seizure. Neither do they violate the taxpayer's

---

[5] There is no basis for taxpayer's statement (Pet. 30) that she "was never ordered by the District court to comply with the collector's summons." The order of January 15, 1952, as well as the order of February 12, 1951, from which the first appeal was taken, could not be construed in any other conceivable way.

constitutional privilege against self-incrimination. The mere summoning of a witness provides no basis for assuming that his constitutional privilege will be impaired. "His duty is to answer frankly until some question is propounded, the answer to which might tend to self-incrimination." *O'Connell* v. *United States,* 40 F. 2d 201, 205 (C. A. 2d). As this Court pointed out in *Hoffman* v. *United States,* 341 U. S. 479, 486, the protection against self-incrimination must be confined to instances where the witness has reasonable cause to apprehend danger from a direct answer, and—

> The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself—his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified, *Rogers* v. *United States,* 340 U. S. 367 (1951), and to require him to answer if "it clearly appears to the court that he is mistaken." *Temple* v. *Commonwealth,* 75 Va. 892, 899 (1881).

Consequently, until the taxpayer appears in response to the order of January 15, 1952, there is no basis for saying that any of her constitutional rights might be violated. Because of her refusal to obey the order of January 15, 1952, the district court was fully justified in taking the measures it did.

Taxpayer has also misconceived the nature of the order of commitment. Her entire argument seems to be based upon the theory that the district

court ordered her committed as punishment for a criminal contempt. However vague and shadowy the line between civil and criminal contempts in other situations may be, see *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441-442; *Terminal R. R. Assn.* v. *United States*, 266 U. S. 17; *Oriel* v. *Russell*, 278 U. S. 358; *United States* v. *Mine Workers*, 330 U. S. 258, 298-299; *Penfield Co.* v. *Securities and Exchange Commission*, 330 U. S. 585; *Maggio* v. *Zeitz*, 333 U. S. 56, 67-69, this is the classic case of commitment for civil contempt for the purpose of enforcing the court's order. *McCrone* v. *United States*, 307 U. S. 61.

Equally lacking in merit is the contention that the district court was without authority to commit for civil contempt because in the revision of Titles 18 and 28 of the United States Code the provision formerly found in Section 385 of Title 28 is now Section 401 of Title 18. Even if this transposition of sections were to be deemed in some way to derogate from the court's statutory authority to enforce its orders, it is elementary that if a court of general jurisdiction has the authority to enter an order it also has the authority to compel compliance with it. *Eilenbecker* v. *Plymouth County*, 134 U. S. 31, 34-40; *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418, 450, and cases cited. And in any event, as the court below held (R. 119-120), Sections 3615, 3633 and 3711 of the Internal Revenue Code are in full force and effect, and clearly authorize the procedures of both the Collector and the court.

CONCLUSION

The decision of the court below is clearly correct and is not in conflict with any other appellate court decision. The petition for a writ of certiorari should be denied.

Respectfully submitted,

WALTER J. CUMMINGS, JR.,
Solicitor General.
CHARLES S. LYON,
Assistant Attorney General.
ELLIS N. SLACK,
FRED E. YOUNGMAN,
Special Assistants to the Attorney General.

JANUARY, 1953.

APPENDIX

Internal Revenue Code:

SEC. 3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.

(a) *General Authority.*—It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

(b) *Acts Creating Liability.*—Such summons may be issued—

* * * * *

(4) *Refusal to permit examination of books.*—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books.

* * * * *

(d) *Service.*—Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

(e) *Enforcement.*—Whenever any person summoned under this section neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper not inconsistent with the law for the punishment of contempts, to enforce obedience

to the requirements of the summons and to punish such person for his default or disobedience.

(26 U.S.C. 1946 ed., Sec. 3615.)

SEC. 3633. JURISDICTION OF DISTRICT COURTS.

(a) *To Enforce Summons.*—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3633.)

SEC. 3651. COLLECTION AUTHORITY.

(a) *In General.*—

(1) *Within District.*—It shall be the duty of the collectors or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3651.)

SEC. 3654. GENERAL POWERS AND DUTIES RELATING TO COLLECTION.

(a) *Collectors.*—Every collector within his collection district shall see that all laws and

regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel compliance with such summons in the same manner as provided in section 3615.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3654.)

SEC. 3711. PRODUCTION OF BOOKS.

All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due.

(26 U.S.C. 1946 ed., Sec. 3711.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 490

IRENE B. WHETSTONE, *Petitioner,*

vs.

ERNEST J. SAUBER, Director of Internal Revenue,
Respondent.

PETITION OF IRENE B. WHETSTONE FOR REHEARING OF THE ORDER DENYING HER PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

IRENE B. WHETSTONE, *Pro se.*

The Scheffer Press, Inc.—ANdover 3-6850

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Irene B. Whetstone, respectfully prays this Court for rehearing of its order entered February 2, 1953, denying her petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, filed December 8, 1952, as Docket 490.

Rehearing is urged upon substantial grounds not previously presented by petitioner, including an intervening circumstance of controlling effect. Such grounds have to do with judicial authority as qualified by paragraph 3 of Article VI of the Constitution, which reads in part:

> "The senators and representatives before mentioned, and the members of the several State legis-

latures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; * * *"

It is indisputably clear that the Constitution requires all Federal justices and judges, as officers of the United States Government, to take an oath to support and defend that instrument. If a prospective officer of the Federal Government were to refuse to take that oath at the time of induction into office he would not be acceptable, since the Constitution, the source of the authority conferred upon him, requires such oath. His refusal would be a repudiation of the very authority he seeks to acquire.

The authority vested in an officer of the United States Government is therefore definitely qualified by this requirement, that he support and defend the Constitution. *That is the law.* If refusal to take this oath renders a prospective officer of the United States Government ineligible to serve, his failure, after taking such oath, to fulfill its undertakings, likewise operates to annul the authority he has falsely assumed; otherwise requiring this oath would be an empty gesture. Attempts to minimize the obligatory nature of the undertakings of the oath required of a judicial officer are not justified. The Constitution provides that "all * * * judicial officers * * * shall be bound * * * to support this Constitution". There are no alternatives or exceptions here.

Ground 1, therefore, in the light of those constitutional requirements discussed in the foregoing paragraphs, is summarized as follows:

That petitioner, as defendant in an action in which unconstitutional measures have been and are being employed against her to deprive her of her liberty, has a

right to expect the Justices of this Court, in view of the undertakings of their respective oaths of office, to exercise their judicial authority to prevent an invasion of her constitutional rights and immunities. Her petition for writ of certiorari should be granted to enable this Court to adjudicate the important Constitutional issues it presents.

Petitioner submits *that the right to exercise discretionary power, as conferred by statutory enactment, does not relieve a judicial officer of the undertakings of his oath of office, required of him by the Constitution.* It is petitioner's right to expect this Court under *all* circumstances to support and defend the Constitution. A constitutional right is a heritage shared in common by all citizens, and it should never be administered by discretionary power to the advantage of one citizen today and to the disadvantage of another tomorrow.

A Federal Judge Transgresses His Oath of Office When He Arbitrarily Withholds Adjudication of Substantial Constitutional Issues.

The first responsibility of a judicial officer, according to the undertakings of his oath of office, is to support and defend the Constitution. Where could he be expected to apply such undertakings except in connection with the judicial function—the adjudication of controversial issues? *By no other means may constitutional rights and immunities be preserved.* Where an appellant, on appeal, raises an issue which includes a constitutional question, particularly one which indicates that a constitutional right or immunity has been invaded, or is threatened with invasion, such officer transgresses the undertakings of his oath if he withholds adjudication of such an issue.

When the judges of the United States Court of Appeals for the Seventh Circuit arbitrarily withheld adjudication of the constitutional issues raised by your petitioner on appeal to that court, they sanctioned unconstitutional procedures in the District court, including:

(1) The issuance of the warrant for petitioner's arrest where there was no "probable cause".

(2) The demand for compulsory self-disclosures of the defendant (your petitioner) who was in court under arrest for alleged violation of a Federal statute.

(3) Denial of due process by that court's refusal to grant a hearing on defendant's answer to the charge of violating a Federal statute.

(4) Denial of due process by its unlawful dismissal of petitioner's suits in equity establishing defenses to the action in which she was charged with violating a Federal statute, and in which she had been denied a hearing on her Answer to such charge.

(5) Denial of due process when it denied defendant (your petitioner) the right to defend or object in open court.

(6) Demand for compulsory self-disclosures of defendant as the price for obtaining her liberty, after she was committed for an offense defined in the Criminal Code and listed therein under "Crimes and Offenses".

And, the United States Court of Appeals for the Seventh Circuit itself denied petitioner "due process of law" when it failed *to take notice,* as the law requires*, of the issues raised by her on appeal to that court, pertaining to the lack of jurisdiction of the District court and the failure of the petition for defendant's arrest to charge an offense cognizable as such in the law.

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*Rule 12 (b) (2) of the Rules of Criminal Procedure, and Rule 12 (h) of the Rules of Civil Procedure.

Petitioner submits that the elaborate provision for the safekeeping of that time-honored document, the Constitution of the United States of America, now sealed in a chamber of helium and stored in a special vault in the Government archives, represents but an insincere rite, if our Federal courts may ignore and abrogate the mandates of the Constitution, and violate at will its limitations and restrictions. The failure of an officer of the United States Government to fulfill the undertakings of his oath of office, to support the Constitution, cannot be rationalized.

To prevent the subversion of the Constitution, this Court should grant the petition for writ of certiorari, urged herein by petitioner, in order to exemplify greater respect for that instrument, and to emphasize the need for closer adherence to its mandates.

The Mandate Issued by the United States Court of Appeals for the Seventh Circuit, Which Will Operate to Deprive Petitioner of Her Liberty, Is Unsupportable in Law.

Since the filing of the petition herein for writ of certiorari, a mandate was issued in this action, February 7, 1953, by the United States Court of Appeals for the Seventh Circuit.

Petitioner submits that this mandate is as spurious and invalid as though it had been issued by a court to whom the cause had never been presented for review. *The decree entered in this action* by the United States Court of Appeals for the Seventh Circuit and reported at 199 F. 2d 520 *is in no sense an adjudication of any of the substantial issues raised by appellant on appeal.* Those issues have been meticulously avoided by both opposing counsel and the courts. These evasive practices, and the omission of all reference to the substantial issues presented by appellant in her points relied upon on appeal, prompt one

to the conclusion that such decree is but a device in a covinous attempt to thwart justice and bury the facts in the ambiguities of a decision directed to fictitious issues.

The function of a reviewing court is to decide the issues *raised by appellant* on appeal. If the court withholds determination of such issues it cannot be said to have adjudicated the action.

Since the United States Court of Appeals for the Seventh Circuit did not adjudicate any of the substantial issues raised by appellant on appeal, the action was not adjudicated, and the mandate is without foundation in law.

Petitioner further submits that her brief on appeal to the United States Court of Appeals for the Seventh Circuit clearly set forth the constitutional issues which are enumerated herein in a foregoing paragraph, and it also cited controlling decisions of this Court. Her brief was a plea to the judges of the Court of Appeals to exercise their judicial authority in support and defense of the Constitution. When the judges of that court arbitrarily withheld adjudication of those constitutional issues, and ignored the pertinent decisions of this Court, they transgressed the undertakings of their oaths of office and forfeited their authority under the terms of the Constitution. Any action taken by that court thereafter was a usurpation of power.

Ground 2 is therefore predicated upon the fact that a mandate was issued by the United States Court of Appeals for the Seventh Circuit, on February 7, 1953, and its issuance constitutes an intervening event of controlling effect, since, as an unsupportable prescript, it will operate to deprive your petitioner of her liberty without due process of law (without adjudication of the issues raised on appeal). The Justices of this Court are legally and morally obligated

to declare this mandate void, since it is not based upon an adjudication of the action in which it is entered, and, it seeks to annul the fundamental principles of liberty and justice as established by the Fourth and Fifth Amendments to the Constitution, which the Justices of this Court have taken oath to support and defend.

The following decisions by this Court support your petitioner's position as to the obligatory nature of the oath of allegiance to the Constitution:

Marbury v. *Madison,* 1 Cranch (U.S.) 137, 180
Cohens v. *Virginia,* 6 Wheat. (U.S.) 264, 381
Ableman v. *Booth,* 62 U. S. 506, 524
Hayburn Case (Report of the Judges), 2 Dall. (U.S.) 409.

Petitioner submits that when a Federal court arrests a citizen where there is no "probable cause", denies a hearing on her Answer, and opportunity to defend in open court; when it resorts to coercion to compel self-disclosures to be used against her, commits her into custody, to remain until she makes such self-disclosures; such proceedings are but one step removed from the secret trial, the forced confessions and the concentration camp. The Justices of this Court should ask themselves if they are willing, by lending their consent, to promote such a program of surrender to the forces of oppression.

Wherefore, your petitioner respectfully prays that this Court reconsider its order denying her petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit, and she prays that it grant said petition; and she appeals to this Court to review the Record of proceedings in the lower courts and pass upon the issues which petitioner has presented, to the end that the Constitution,

which the officers of this Court are required to support, may be preserved, and petitioner's rights thereunder protected from invasion.

Respectfully submitted,

IRENE B. WHETSTONE,
Pro se

State of Illinois }
County of Cook } ss.

This is to certify that the foregoing petition is presented in good faith, that it is not interposed for purposes of delay, but it is believed to be well founded in law and fact, and it is restricted to (1) grounds which, though available to petitioner, were not previously presented, and (2) grounds confined to intervening event of controlling effect.

Irene B. Whetstone

Subscribed and sworn to before me
this 16th day of February, 1953

Mary Anderson
Notary Public

(Seal)

City of Washington
District of Columbia

Irene B. Whetstone, a citizen of the United States of American, residing at 9820 Vanderpoel Avenue, Chicago, Illinois, being first duly sworn, deposes and says, that. service was made upon the respondent (Ernest J. Sauber) by today mailing a copy of the foregoing petition, by registered mail, addressed to his attorney, the Honorable Walter J. Cummings, Solicitor General of the United States, Department of Justice, Washington, D. C.

Irene B. Whetstone

Subscribed and sworn to before me
this 23 day of February, 1953.

Mary Whiston
Notary Public

Service Acknowledged

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.....